

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHATTAHOOCHEE
RIVERKEEPER, INC.

Plaintiff,

v.

M & K WAREHOUSES, LLC

Defendant

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Civil Action No. 1:14-CV-3798 (LMM)

DEFENDANT M & K WAREHOUSES, LLC'S
MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant, M&K Warehouses, LLC ("M&K"), pursuant to Rule 56 of the Federal Rules of Civil Procedure, Local Rule 56.1, and this Court's Standing Order Regarding Civil Litigation, and respectfully moves this Court to grant summary judgment in its favor on the claims asserted in Plaintiff's Complaint under provisions of the Clean Water Act. M&K will demonstrate to the Court in support of this Motion for Summary Judgment that M&K is entitled to judgment as a matter of law based on the material undisputed facts, as M&K under those facts is not a person subject to liability in a Clean Water Act citizen suit under the provisions in 33 U.S.C.A. § 1365 on account of alleged discharges of

pollutants into waters of the United States committed by a tenant, American Sealcoat Manufacturing, LLC, without a permit in asserted violation of 33 U.S.C.A. § 1311.

In support of this Motion, M&K relies on documents, testimony, and other evidence of record material to the dispositive legal question presented to the Court by this Motion of whether an innocent, passive, out-of-possession owner/lessor of real property is subject to liability in a Clean Water Act citizen suit on account of alleged unpermitted discharges of pollutants in violation of Clean Water Act permitting requirements committed by a tenant during its occupation of leased property. In support of this Motion Defendant, relies on all matters of record in this action including depositions to be filed of record contemporaneous with the filing of this Motion, and specifically including the Parties' pleadings (Complaint, ECF Doc No. 1, Answer and Defenses to Complaint, ECF Doc No. 8), Defendant's Responses to Plaintiff's First Interrogatories to Defendant, ECF Doc No. 51-1, the parties' Initial Disclosures (ECF Doc Nos. 10 and 11), and the depositions and deposition exhibits of the following persons: Betty Nasuti; Kim Fragale; Jason Ulseth; Justin Vickery; Cindy Nix; and, David Mansfield.

In further support of this Motion for Summary Judgment, M&K is filing herewith a separate and concise statement of the material facts as to which it

contends there is no genuine dispute to be tried, and a Brief in Support of this Motion for Summary Judgment which discusses the material facts and the legal grounds and authorities clearly supporting the grant of summary judgment in favor of Defendant against Plaintiff's claims. Plaintiff has asserted the same claims against the responsible tenant itself, American Sealcoat Manufacturing, LLC, in a separate action earlier filed in this Court.

WHEREFORE, Defendant respectfully prays that this Honorable Court inquire into and determine this Motion and grant summary judgment in favor of Defendant M&K Warehouses, LLC on the claims asserted against it in the Plaintiff's Complaint under the Clean Water Act.

Respectfully submitted this 3rd day of June, 2015.

/s/ Robert C. Norman Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2015 I electronically filed the foregoing document DEFENDANT M & K WAREHOUSES, LLC'S MOTION FOR SUMMARY JUDGMENT with the Clerk of Court using CM/ECF system which will send notifications of such filing to all attorneys of record via electronic mail upon:

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